

Supreme Court U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. **78-1256**

MRS. INEZ WALLER,

Petitioner,

VERSUS

MISSISSIPPI STATE HIGHWAY COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MISSISSIPPI

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SUPREME COURT OF THE UNITED STATES OCTOBER TERM. 1979

NO. _____

MRS. INEZ WALLER

PETITIONER

VERSUS

MISSISSIPPI STATE HIGHWAY COMMISSION

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Mississippi entered in the above case on October 4, 1978. A subsequent Petition for Rehearing was denied on November 15, 1978.

OPINIONS BELOW

There are no reported opinions.

JURISDICTION

The jurisdiction of this Court is invoked under 23 U.S.C. 1257(3). The judgment of the Supreme Court of the State of Mississippi was rendered on October 4, 1978, and an Order Denying Petition for Rehearing was entered on November 15, 1978, copies of which are appended to this Petition in the Appendix at pages A-2, A-6, and A-7.

QUESTIONS PRESENTED

Petitioner, a tenant in common with her husband, owned

an undivided half interest in land condemned by the Respondent, Mississippi State Highway Commission. An action was brought by the Respondent which named only the husband, and a trial to determine damages was held in the Special Court of Eminent Domain. Petitioner was present at the trial and was subjected to cross-examination by Respondent's counsel but was never asked whether she, too, owned an interest in the condemned land; and she never testified to an ownership interest. The jury returned an award for damages. Thereafter, Petitioner instituted suit in a court of law to secure compensation for her interest in the land. On motion of the Respondent, the cause was transferred within Mississippi's bifurcated system to a court of equity in which the Respondent might assert such equitable defenses as estoppel and unjust enrichment. The Chancellor found that the Highway Commission had not legally condemned Petitioner's interest under Mississippi's eminent domain statutes and had not shown the applicability of any equitable defenses. Respondent appealed, and the Mississippi Supreme Court reversed on the grounds that Petitioner was equitably estopped from asserting her ownership interest in the land and receiving compensation. Petitioner's ownership interest was of record and available for all the world to see.

The questions presented are:

(1) May the state assert an equitable defense to defeat a claim that it has condemned property in a manner inconsistent with its own statutes which has worked to deny compensation to the owner of an interest in that property?

(2) If the state has failed to follow the guidelines of its own statutes in the condemnation of property by failing to name all the owners of an interest in that property as parties in the condemnation proceeding, is it a denial of due process

to deny an unnamed owner a judicial determination of the value of her interest when such is the manner provided by law?

(3) May the state refuse to compensate the owner of an undivided half interest in land on the grounds that it has paid compensation for the whole value of the condemned land to the owner of the other undivided half interest as the result of a proceeding to which the unnamed owner was not a party, when the statute placed a clear duty on the state to ascertain the identity of the owners of all interests in property to be taken by the state; or, has there been a violation of due process?

Constitutional Provisions Involved

The principal Constitutional provisions involved are the Fifth and Fourteenth Amendments to the Constitution of the United States.

State Provisions Involved

Because this Petition rests on the fact that the State of Mississippi, acting by and through its Highway Commission, failed to abide by the provisions of its own statutes, the applicable Mississippi statutes are set out in the Appendix hereto under separate heading.

STATEMENT OF THE CASE

Mrs. Inez Waller was the owner of an undivided one-half interest in land through a deed which named her as a tenant in common with her husband. The deed was of public record and available for all the world to see, and Mrs. Waller had occupied the property for many years.

On or about September 12, 1975, the Mississippi State Highway Commission began condemnation proceedings to take

for public use a portion of the land jointly owned and occupied by the Wallers. Under Mississippi procedures, such a proceeding is brought on Application to the Special Court of Eminent Domain and is a judiciary rather than administrative procedure. The cause was styled "State Highway Commission of Mississippi v. Wayne Waller." Mrs. Inez Waller, the Petitioner, a co-tenant of Wayne Waller, was not named, no process was issued for her, and no authority was granted by the Commission to take her interest. A trial was held on the issue of damages on January 9 and 10, 1976, during which Mrs. Inez Waller testified as to the value of the property being taken and further testified about her occupation and use of the property. She was not asked whether she held an ownership interest and did not testify as to any ownership interest in the property. As is the practice in Mississippi, the issue of damages and compensation was submitted to a jury; and a verdict was returned which resulted in a verdict for Mr. Wayne Waller in the sum of Fourteen Thousand Seven Hundred Forty and No/100 (\$14,740.00) Dollars.

In August, 1976, Mrs. Waller filed a lawsuit against the State Highway Commission alleging *inter alia* that the State was taking her property without compensation in violation of the Fifth Amendment of the Constitution of the United States.

Mississippi has a bifurcated system of law and equity courts; and following the filing of the Petitioner's action in a court of law, the State Highway Commission moved for a transfer to a court of equity so that it could raise the equitable defenses of estoppel and unjust enrichment, as well as decide title to real estate. A trial was had before a Chancellor who determined that the equitable defenses just named had no applicability and that Mrs. Waller's interest in the land had not been legally condemned. The Chancellor stated that the primary reason the original eminent domain condemnation was invalid was that the Highway Commission had no authority on its minutes (as required by the Mississippi Code) to condemn Mrs. Waller's

property and that the actions of the Commission amounted to a violation of due process and a taking without compensation.

The State appealed and the Mississippi Supreme Court, in an unpublished opinion, ignored all other issues in holding that Mrs. Waller was estopped from asserting her interest in the condemned land in a later proceeding. Thereafter, a Petition for Rehearing was denied.

Reasons for Granting the Writ

Rule 12 of the Rules of the Supreme Court of the United States set forth that a Writ of Certiorari will be granted "only where there are special and important reasons therefor." The Supreme Court's discretion characterized by the further illustration that the reasons may be measured by the statement:

- (a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.
(Rule 19)

In the instant case, the Mississippi Supreme Court has ignored a valid federal question laid squarely before it and has excused the violation of constitutionally guaranteed rights through the vehicle of an unpublished opinion and reliance on common law equitable defenses.

This case presents the novel question of whether a State's taking of private property for public use without compensation may be negated by the utilization of such equitable doctrines as *equitable estoppel*, and whether such a taking constitutes a denial of due process and equal protection of law if it is done in a manner contrary to the statutory provisions governing eminent domain.

The United States Supreme Court has stated that the Fourteenth Amendment made the provision of the Fifth Amendment against the taking of private property for public use without just compensation obligatory on the States. *Gideon v. Wainwright*, 372 US 336, 342, 343, 9 L ed 2d 799, 803, 304, 83 S Ct 792 (1963) citing at N. 5; *Chicago, B & Q R. Co. v. Chicago*, 166 US 226, 235-241, 41 L ed 979, 984-986, 17 S Ct 581 (1897); *Smyth v. Ames*, 169 US 466, 522-526, 42 L ed 819, 840-842, 18 S Ct 418 (1898).

The condemnation of Petitioner's land was a legal nullity. Several sections of the Mississippi Code were completely abrogated.

Section 11-27-5 states that any entity with the right to condemn must file a petition which makes

all the owners . . . or other person having an interest therein [in the property sought to be condemned] . . . a Defendant thereto . . . The Petition shall describe in detail the property . . . , and shall identify the interest or claim of each Defendant.

This was not done by the condemnor, Respondent herein. Other sections which name the Respondent as an entity which may condemn requires that it "speak only through its minutes," Section 65-1-5 and that its minutes authorize the bringing of a condemnation in conformity with the Section (11-27-5) quoted above. None of this was observed by Respondent in the instant case, and the property and legality of the condemnation itself was never addressed by the Mississippi Supreme Court. If the Respondent did not have the authority to condemn Petitioner's interest, then the condemnation of the land is an arbitrary taking for which she has not been compensated. An error of this magnitude is a denial of due process and amounts to a disregard of Respondent's right to have the value of her interest adjudicated and just compensation paid to her. *Roberts v. City of New York*, 295 US 264, 277-278, 79 L ed 1429, 1435-1436, 55 S Ct 689 (1934); *McGovern v. City of New York*, 229 US 369-371, 57 L ed 1228, 1231-1233, 33 S Ct 876 (1913).

Although Petitioner's husband received notice that he was a defendant in an eminent domain condemnation suit, Petitioner herself never received any direct judicial notice of the proceedings, and the notice she did have applied only to her co-tenant.

The fact that Mrs. Waller owned an undivided half interest in the condemned property was readily and easily ascertainable from public land records, and it was the duty of the State to ascertain this ownership and give notice to her. The Petitioner's only notice was the proceeding against her husband's interest which did not make her a party. In Mississippi there is no right to intervene in a lawsuit apart from statute and there is no authorization to intervene in an eminent domain proceeding; thus, even though she received actual notice of the condemnation, the Petitioner could still not have participated as a party to the condemnation proceeding.

Failure to include Petitioner as a defendant therefore amounted to a lack of notice and the denial of her right to judicially determined compensation. *Walker v. Hutchinson*, 352 US 112, 115-116, 1 L ed 2d 178, 181-182, 77 S Ct 200 (1956); *Schroeder v. City of New York*, 371 US 208, 9 L ed 2d 255, 83 S Ct 279.

The Highway Commission of the State of Mississippi has the power to condemn land under the authority of the laws of Mississippi. But it and any other entity must abide by the procedures contained in those statutes.

Mr. Justice Holmes dissenting in *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 US 239, 49 L ed 462, 25 S Ct 251, stated at 196 US 257:

.....
The fundamental fact is that eminent domain is a prerogative of the state, which, on the one hand, may be exercised in any way that the state thinks fit, and, on the other, may not be exercised except by an authority which the state confers. . . .

And it is clear that the concept that the state must obey its own laws and strictly adhere to its own procedures when

condemning private property is a basic and fundamental right of owners of private property under the Constitutional concept of government of limited and specified powers. *City of Cincinnati v. Vester*, 281 US 439, 74 L ed 950, 50 S Ct 360 (1929); See also *New Orleans v. The United States*, 10 Peters 573, 9 US 662, (1936).

For the State to avoid its responsibility to insure the application of due process to its citizens by the assertion of an equitable defense gives rise to a dangerous concept. Under this reasoning, if the state were to violate the fundamental rights of one of its citizens, it could, if it so chose, hamper that citizen's access to its courts by the assertion of common law defenses and matters which might bar that citizen's right to obtain redress. No argument is made that Mississippi's form of eminent domain is in itself violative of due process; but, when the form is ignored by the condemnor, due process has been violated.

Regarding the instant case, Mississippi case law provides that the requirement that all parties of interest be made parties to the condemnation and be duly notified by proper process must be strictly followed. *New v. State Highway Commission*, 297 So.2d 821 (Miss. 1974). Thus, under Mississippi's legislatively devised statutory method of eminent domain condemnation, actual notice means nothing and procedural notice means everything. The equitable defenses asserted by the state derived from Petitioner's having actual notice of the proceeding, testifying therein, but not testifying to an ownership interest in the condemned land. As the result of the assertion of estoppel being allowed by the Mississippi Supreme Court, Petitioner's claim for compensation for her interest in the property was barred forever; yet, Mississippi law has no provisions for her intervention into a condemnation proceeding to which she was not a party. This combination, if carried to its logical extension, would mean that in Mississippi, if the condemning entity fails to fully identify and give notice to all parties;

and these parties have actual or constructive notice of the proceeding in condemnation, then they will not be able to intervene in the present condemnation and could be barred from initiating actions at law to recover compensation from the condemnor. See *Chase National Bank v. City of Norwalk*, 291 US 431, 78 L ed 894 (1933)

CONCLUSION

This Petition should be granted. The fundamental right to own property and to be secure from having that property taken by government without just compensation or the due process of law deserves to be zealously protected. To allow government to avoid its errors by the assertion of common law defenses designed to regulate civil actions between individuals could work to rubberstamp governmental wrongdoing in instances in which those who are poor or ignorant of their legal rights fails to completely follow the law in ways which are not statutory and which may result in a highly subjective application of common law maxims to defeat the rights of such people.

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Counsel for Petitioner

PROOF OF SERVICE

I, William Lawson, one of the attorneys for Mrs. Inez Waller, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 5th day of January, 1979, I served copies of the foregoing Petition for a Writ of Certiorari to the Supreme Court of the State of Mississippi on the party thereto, as follows:

On the Mississippi State Highway Commission by and through its agent for the service of process, Honorable A. F. Summers, Attorney General for the State of Mississippi by mailing a copy in a duly addressed envelope, with postage prepaid, to said Attorney General at Post Office Box 220, Jackson, Mississippi 39205.

WILLIAM LAWSON
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Tupelo, Mississippi 38801

William Lawson *per m.a.s.*
Counsel for Petitioner

APPENDIX

**SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979**

NO. _____

MRS. INEZ WALLER

PETITIONER

VERSUS

MISSISSIPPI STATE HIGHWAY COMMISSION

RESPONDENT

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**OPINION OF THE SUPREME COURT OF
MISSISSIPPI RENDERED OCTOBER 4, 1978**

IN THE SUPREME COURT OF MISSISSIPPI

NO. 50,634

MISSISSIPPI STATE HIGHWAY COMMISSION

v.

MRS. INEZ WALLER

NOT DESIGNATED FOR PUBLICATION

**COURT FROM WHICH APPEALED: CHANCERY COURT
 LAFAYETTE COUNTY**

**PRESIDING JUDGE: CHANCELLOR WILLIAM H.
 ANDERSON**

ATTORNEYS: FOR APPELLANT: BLAIR & MACKEY

FOR APPELLEE: CRAIG & CLISBY

NATURE OF THE CASE: EQUITABLE ESTOPPEL

DISPOSITION: REVERSED AND RENDERED

BEFORE SMITH, WALKER AND BOWLING

BOWLING, JUSTICE, FOR THE COURT:

This is an appeal from the Chancery Court of Lafayette County, Mississippi. The record shows an unusual chain of events leading to the chancellor's final decree.

The Mississippi State Highway Commission was in the process of acquiring real property for the construction of two additional lanes of the highway between Oxford and Batesville. On September 15, 1975, the State Highway Commission filed its application of taking in a Special Court of Eminent Domain of Lafayette County, the primary purpose of the suit being to establish the value of approximately three acres of land near Oxford that was necessary for the highway construction.

The only defendant and alleged landowner in the cause was Wayne Waller, whereas in truth and in fact, his wife, Mrs. Inez Waller, appellee herein, for many years had owned the property as tenants in common with her husband. In some manner, the exact reason not being entirely clear in the record, the Highway Commission made an error and did not include Mrs. Waller in the suit.

Testimony was received from various experts presented by both sides of the eminent domain controversy. Testimony was also received from Wayne Waller and appellee, Mrs. Inez Waller.

The eminent domain court jury found that the property being taken had a total value of \$14,740. This verdict and subsequent judgment entered on January 12, 1976, together with interest, was paid by the Highway Commission to the husband, Wayne Waller.

On June 11, 1976, appellee, Mrs. Inez Waller, represented by the same attorneys who appeared for her husband, filed an inverse condemnation proceeding in the Circuit Court of Lafayette County, alleging that Mrs. Waller had not been paid for her one-half interest in the property taken and that she was entitled to the same amount given by the jury in the first case.

The Highway Commission answered the suit, setting out several defenses, among which were affirmative defenses of equitable estoppel and unjust enrichment. After these pleadings, the Highway Commission filed its motion to transfer the cause to the chancery court for the reason that serious equitable questions were involved. Although this motion was contested, the circuit court entered its order transferring the cause to the chancery court where it was tried on October 5, 1976. The lower court filed its written opinion on August 8, 1977, and entered its final decree on August 22, 1977. This decree found that appellee was entitled to one-half of the original total value of the land as set by the jury of the court of eminent domain.

At the trial in the chancery court, there was considerable testimony from Mr. and Mrs. Waller, expert witnesses, as well as statements entered into the record by the attorneys. We carefully have read and studied all of this evidence, including depositions given by the parties, and are of the opinion that no useful purpose would be served by discussing that evidence here in detail. After reviewing the entire record, we are of the opinion that the lower court was in error in holding that the principal of equitable estoppel does not here apply. As obviously thought by the circuit judge, the cause really is a matter for equitable considerations. We find that the principles of equitable estoppel as set out in *Peller, et al v. Hutson*, 202 Miss. 837, 32 So.2d 785 (1974), and *Kelso, et al v. Robinson*, 172 Miss. 828, 161 So. 135 (1935), apply to the situation as revealed by this record. It is elemental that every case of this nature is different. The facts in no two cases are identical. In our opinion, the authorities cited by the learned chancellor do not apply to the record of this particular case. Considering all the circumstances and evidence in this cause, we find and so hold that appellee was estopped from filing the declaration in the nature of an inverse condemnation suit.

The cause, therefore, should be and it is **reversed** and rendered for the Mississippi State Highway Commission.

REVERSED AND RENDERED.

PATTERSON, C.J., SMITH, P.J., ROBERTSON, P.J.
SUGG, WALKER, BROOM, LEE AND COFER, J.J.,
CONCUR

**JUDGMENT OF THE SUPREME COURT OF
MISSISSIPPI DATED DECEMBER 1, 1978**

IN THE SUPREME COURT OF MISSISSIPPI

NO. 50,634

MISSISSIPPI STATE HIGHWAY COMMISSION

v.

MRS. INEZ WALLER

JUDGMENT

This cause having been submitted at a former Term of this Court on the record herein from the Chancery Court of Lafayette County and this Court having sufficiently examined and considered the same and being of the opinion that there is error therein doth order and adjudge that the Judgment of the Chancery Court rendered in this cause on the 22nd day of August, 1977, be and the same is hereby reversed and Judgment is rendered here for the Mississippi State Highway Commission. It is further ordered, adjudged and decreed that the appellee do pay all of the costs of this appeal to be taxed for which let proper process issue.

/s/ Honorable Neville Patterson
Chief Justice

/s/ Julia H. Kendrick
Clerk

**ORDER OF THE SUPREME COURT OF
MISSISSIPPI DENYING PETITION FOR
REHEARING HANDED DOWN NOVEMBER 15, 1978**

IN THE SUPREME COURT OF MISSISSIPPI

NO. 50,634

MISSISSIPPI STATE HIGHWAY COMMISSION

v.

MRS. INEZ WALLER

This cause this day came on to be heard on Petition for Rehearing filed herein and this Court having sufficiently examined and considered the same and being of the opinion that the same should be denied doth order that said Petition be and the same is hereby denied.

/s/ Honorable Neville Patterson
Chief Justice

/s/ Julia H. Kendrick
Clerk

**SECTION 11-27-5, MISSISSIPPI CODE OF 1972,
ANNOTATED**

§11-27-5. Petition to condemn - parties - preference.

Any person or corporation having the right to condemn private property for public use shall file a petition to condemn with the circuit clerk of the county in which the affected property, or some part thereof, is situated and shall make all the owners of the affected property involved, and any mortgagee, trustee, or other person having any interest therein or lien thereon a defendant thereto. The petition shall be considered a matter of public interest and shall be a preference case over other cases except other preference causes. The petition shall describe in detail the property sought to be condemned, shall state with certainty the right to condemn, and shall identify the interest or claim of each defendant.

**SECTION 65-1-5, MISSISSIPPI CODE OF 1972,
ANNOTATED**

§65-1-5, Organization and meetings.

Upon the said three highway commissioners chosen from three supreme court districts entering upon the duties of their office, the state highway commission shall meet and organize by the election of one of its members to serve as chairman of the commission for the four-year term for which said commissioner shall have been elected. The commission, a majority of which shall constitute a quorum, shall meet in regular session on the second Tuesday of each month at the office of the state highway commission in their offices at Jackson, Mississippi; and at such regular sessions it may hear, continue, and determine any and all matters coming before it. The said commission may hold special sessions at the call of the director or chairman at such times and places in this state as either of them may deem necessary. At such special sessions it may hear, continue, consider, and determine any and all matters coming before it, provided that at least five day's notice of such meetings shall be given to all the members of the commission beforehand. A special session may be called at any time without the foregoing notice, or any notice, if by and with the unanimous consent of all the members of the commission, but such unanimous consent shall be spread at large on the minutes of the commission.

The state highway commission herein created shall act as a legal entity and shall only speak through its minutes, and in all matters shall act as a unit. Any action on the part of any member of said commission separately shall not bind said commission as a unit, but said individual member only shall be liable personally on his official bond.